

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

AHCA No. 2013002129

OCALA BEHAVIORAL HEALTH LLC,
d/b/a THE VINES,

Respondent.

IMMEDIATE MORATORIUM ON ADMISSIONS

THIS CAUSE came on for consideration before the Secretary of the State of Florida, Agency for Health Care Administration, or her duly appointed designee who, after a careful review and consideration, finds and concludes as follows:

THE PARTIES

1. The State of Florida, Agency for Health Care Administration ("the Agency"), is the licensure and regulatory authority that oversees residential treatment centers for children and adolescents in Florida and enforces the applicable statutes and rules governing such facilities. Chs. 394, Part IV, and 408, Part II, Fla. Stat. (2012); Ch. 65E-9, Fla. Admin. Code. As part of its statutory oversight responsibilities, the Agency has the authority to impose emergency orders, including an emergency suspension order of license and a moratorium on admissions, when circumstances dictate such action. §§ 394.902, 408.814, 120.60, Fla. Stat. (2012); Fla. Admin. Code R. 65E-9.004(3)(a).

2. The Respondent, Ocala Behavioral Health LLC d/b/a The Vines ("the Respondent"), was issued a license by the Agency (License Number 45) to operate a fifty (50)

person capacity residential treatment center for children and adolescents, located at 3130 Southwest 27th Avenue, Ocala, Florida 34471 (“the Facility”). § 394.875(2), Fla. Stat. (2012). The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services pursuant to sections 394.491, 394.495 and 394.496, Florida Statutes, to children and adolescents who meet the target population criteria specified in Section 394.493(1)(a), (b), or (c), Florida Statutes. § 394.875(1)(c), Fla. Stat. (2012).

3. The Florida Legislature has expressed its intent that certain principles guide the development and implementation of the publicly funded child and adolescent mental health treatment and support systems. These guiding principles include that: The system should be centered on the child, adolescent, and family, with the needs and strengths of the child or adolescent and his or her family dictating the types and mix of services provided. . . . Through an appropriate screening and assessment process, treatment and support systems should identify, as early as possible, children and adolescents who are in need of mental health services and should target known risk factors. . . . Children and adolescents should receive services within the least restrictive and most normal environment that is clinically appropriate for the service needs of the child or adolescent. . . . The delivery of comprehensive child and adolescent mental health services must enhance the likelihood of positive outcomes and contribute to the child's or adolescent's ability to function effectively at home, at school, and in the community. . . . Mental health services for children and adolescents must be provided in a sensitive manner that is responsive to cultural and gender differences and special needs. § 394.491(1), (6), (7), (11) and (15), Fla. Stat. (2012).

4. As the holder of a license to operate a residential treatment center for children and adolescents, the Respondent is a “licensee” as defined by Section 408.803(9), Florida Statutes

(2012), and is “legally responsible for all aspects of the provider operation.” § 408.803(9), Fla. Stat. (2012). “Provider” means “any activity, service, agency, or facility regulated by the Agency and listed in Section 408.802,” Florida Statutes (2012). § 408.803(11), Fla. Stat. (2012). The Agency regulates residential treatment centers for children and adolescents under Chapter 394, Part IV, Florida Statutes (2012), and listed in Section 408.802, Florida Statutes (2012). § 408.802(7), Fla. Stat. (2012). Individuals receiving services within a residential treatment center for children and adolescents are “clients.” §§ 394.67(2), 408.803(6), Fla. Stat. (2012).

5. The Agency has jurisdiction over the Respondent pursuant to the above-stated provisions of law.

6. The current census at the Respondent’s Facility as of the date of this Immediate Moratorium on Admissions is twenty-eight (28).

THE AGENCY’S MORATORIUM ON ADMISSIONS AUTHORITY

7. Under Florida law, the Agency may impose an immediate moratorium or emergency suspension as defined in subsection 120.60, Florida Statutes (2012), on any provider if the Agency determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client. § 408.814(1), Fla. Stat. (2012).

8. Under Florida law, if the Agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the Agency may take such action by any procedure that is fair under the circumstances. § 120.60(6), Fla. Stat. (2012).

9. Under Florida law, in accordance with Part II of Chapter 408, Florida Statutes, the Agency may impose a moratorium on elective admissions to a licensee or any program or portion of a licensed facility if the Agency determines that any condition in the facility presents a

threat to the public health or safety. § 394.902, Fla. Stat. (2012).

10. Under Florida law, an immediate moratorium on admissions shall be placed on the facility when it has been determined that any condition in the facility presents an immediate or direct threat to the health, safety, and well being of children in the facility. Fla. Admin. Code R. 65E-9.004(3)(a). The following situations are examples of threats constituting grounds for a moratorium: 1. Inappropriate or excessive use of restraint and seclusion; 2. The presence of children who need more care than can be provided by the facility; 3. Food supply inadequate to provide proper nutrition to children; 4. Lack of sufficient staff who are skilled and competent to provide for or to meet the immediate needs of the children; 5. Notification by the local fire marshal's office or county health department that conditions exist which impose an immediate threat to the children; or 6. Significant or repeated staff error resulting in failure to administer medications as prescribed. Fla. Admin. Code R. 65E-9.004(3)(a).

LEGAL REQUIREMENTS FOR RESIDENTIAL TREATMENT CENTERS FOR CHILDREN AND ADOLESCENTS

11. The Respondent holds itself out to the public as a residential treatment center for children and adolescents that complies with the applicable state laws. The laws governing these types of facilities exist to protect the health, safety and welfare of the clients that reside within them. As the recipients of the care and services provided at a residential treatment center for children and adolescents, the clients are entitled to the benefits and protections under Chapters 394 and 408, Florida Statutes (2012), as well as Chapter 65E-9, Florida Administrative Code.

Rights of Children

12. Under Florida law, the provider shall protect children's rights under the federal and state constitutions and as specified in Sections 394.459 and 394.4615, F.S. The provider shall also ensure that: (a) Physical punishment and treatment modalities that place the child at

risk of physical injury or pain or death, including electroconvulsive or other convulsive therapy, "cocoon therapy," or other hazardous procedures shall never be used. (b) Children shall not be subjected to cruel, severe, unusual or unnecessary punishment or assigned excessive exercise or work duties, nor shall they be subjected to physical or mental abuse or corporal punishment. (c) The simultaneous use of seclusion and mechanical restraint is prohibited. (d) Children shall not be subjected to hazing, verbal abuse, coercion or remarks that ridicule them, their families or others. (e) Children shall not be denied food, water, clothing, or medical care. (f) Children shall not be exploited or required to make public statements to acknowledge gratitude to the provider program or perform at public gatherings. (g) Identifiable pictures of children shall not be used without prior written consent of the parent or guardian. The signed consent form for any such usage shall be event-specific, indicate how the pictures will be used, and placed in the child's clinical record. Fla. Admin. Code R. 65E-9.012(1).

13. Under Florida law, Child Abuse and Neglect – (a) The provider, as a mandated reporter, shall report to the department and the Abuse Registry all suspected cases of child abuse, neglect, and exploitation in accordance with Chapter 39 and Section 394.459, F.S. (b) Each child shall have ready access to a telephone in order to report an alleged abuse, neglect or exploitation. The provider shall inform each child verbally and in writing of the procedure for reporting abuse. A written copy of that procedure, including the telephone number of the abuse hotline and reporting forms, shall be posted in plain view within eighteen inches of the telephone(s) designated for use by the children. (c) The provider shall establish and implement a written procedure for the immediate protection of the alleged victim or any other potential victim and prevention of a recurrence of the alleged incident pending investigation by the department or law enforcement. (d) The provider shall require each paid and volunteer staff member, upon

hiring and every 12 months thereafter, to read and sign a statement summarizing the child abuse and neglect laws and outlining the staff member's responsibility to report all incidents of child abuse and neglect. Such signed statements shall be placed in each employee's personnel file. (c) Residents' rights posters, including those with the telephone numbers for the Florida Abuse Hotline, Statewide Advocacy Council and the Advocacy Center for Persons with Disabilities, shall be legible, a minimum of 14 point font size, and shall be posted immediately next to telephones which are available for residents' use. Fla. Admin. Code R. 65E-9.012(3).

Health, Medical, and Emergency Medical and Psychiatric Services

14. Under Florida law, each staff member shall be required to report to the program's physician and note in the child's record any illnesses or marked physical dysfunction of the child. Fla. Admin. Code R. 65E-9.006(7)(i).

Organization – Operating Standards

15. Under Florida law, Incident notification: 1. The provider shall comply with the department's and the agency's procedures for reporting incidents that pose risk of serious psychological and physical harm to children being served. 2. The provider shall develop and implement on an ongoing basis a written procedure for incident notification, reflecting the requirements of the department's operating procedure CFOP 215-6, which is incorporated by reference. Fla. Admin Code R. 65E-9.005(3)(l).

THE AGENCY'S SURVEY AND FINDINGS OF FACT

16. After careful consideration, the Agency finds that the Respondent is presently in substantial non-compliance with the statutes and rules that govern residential treatment centers for children and adolescents in Florida and that this substantial non-compliance with the statutes and rules has resulted in current conditions at the Respondent's Facility that present a threat to

the health, safety or welfare of the clients of the Facility and an immediate serious danger to the public health, safety or welfare. The Agency further finds that this threat and immediate serious danger is of such a degree and magnitude that it warrants an immediate moratorium on admissions to the Respondent's Facility, pursuant to the above-stated provisions of law.

17. On February 19, 2013, the Agency conducted a survey of the Respondent and its Facility. During the survey, the Agency's surveyors reviewed records, observed conditions and conducted interviews. Based upon this survey, the Agency finds as follows:

a. Facility records reflect that patient number one (1) was admitted to the Respondent's Facility on January 10, 2013, with diagnoses including Attention Deficit Disorder, Hyperactivity Disorder, Intermittent Explosive Disorder and Conduct Disorder.

b. This child patient reported that on February 15, 2013, at approximately 7:00 p.m., Respondent's staff member "A," a mental health technician, entered the child's room and twisted the child's arm behind the back like a "chicken wing." The child heard a strange sound and screamed. Respondent's staff member "B," a mental health technician, and staff member "C," a registered nurse, responded to the child's scream. The child told these staff members, "B" and "C," that staff member "A" had broken the child's arm.

c. A second child, patient number two (2), has a room next to the room of patient number one (1). Patient number two (2) indicated that on February 15, 2013, staff member "A" entered the room of patient number one (1) and shut the door; patient number one (1) had been jumping on the bed. The child heard patient number one (1) scream: "He broke my arm."

d. Two facility documents dated February 15, 2013, address this event. The first document, completed by staff member "A," reports that the staff member found patient number one (1) on the floor complaining of pain to the arm and the staff member called the Respondent's nurse who took over care for the child. The second document, completed by staff member "C," memorializes that she heard the child scream, assessed the child, noted the arm was not swollen or red, provided Tylenol and notified the physician. This nurse placed the child's name on a list for the Advanced Registered Nurse Practitioner.

e. Staff member "C," also completed nursing notes regarding the event, documenting "at 2010 [patient number one (1)] screamed ... I and fellow [staff member "B"] went into room (sic)." The nurse further documents in these notes that she administered Tylenol, examined the patient, provided an ice pack, and notified the child's parent, physician, a supervisor, and the Respondent's administrator. She also noted a referral of the child to the advanced registered nurse practitioner. No further relevant information is documented.

f. Staff member "C" noted on the medication administration for the child that, upon administering the Tylenol to the child at 8:30 p.m. on February 15, 2013, the child reported the pain level as "10" on a scale of "1" to "10."

g. When treating the child, Staff member "C" heard the child identify "staff" as who broke the child's arm. She did not report possible abuse, commence an investigation of possible abuse, or separate the alleged abuse from patient number one (1) or other patients of the facility. Staff member "A" remained on duty throughout his shift that night.

h. Staff member "C" explained on February 19, 2013, the following regarding patient number one (1): After administering Tylenol, the child slept the rest of the night. The child was taken to the hospital on February 16, 2013, at approximately 7:30 a.m., and was diagnosed with a spiral fracture to the upper left arm. The child reported the injury to hospital personnel, law enforcement was called, and staff member "A" was arrested later that day for abusing patient number one (1).

i. Staff member "C" further reported to Agency personnel that she was not functionally aware of abuse reporting and investigation procedures, including the separation of the alleged perpetrator from patients, though she asserts she had attended all required staff trainings and more. She described this training as verbal or discussions, videos and on-line.

j. Staff member "B" explained on February 19, 2013, the following regarding patient number one (1): He heard patient number one (1) scream, ran to the child's room, and called for the registered nurse. The child was yelling "He broke my arm!" Staff member "B" believed the child to be referring to staff member "A" as staff member "A" had been interacting with the child immediately before the child began yelling, and staff member "A" had shut the child's door, which is against Facility policy.

k. Staff member "B" further reports that no abuse investigation was commenced after the incident, staff member "A" was not separated from patient number one (1) or other children, and that the only person who he mentioned the incident to was Respondent's registered nurse, staff member "B." He added that he is one of Respondent's Crisis Intervention/ Abuse trainers for the Facility.

l. The physician of patient number one (1) stated that when called by Respondent's staff member "C" on the evening of February 15, 2013, the registered nurse reported the child's complaint of arm pain as "2" out of "10." The nurse did not tell the physician of the child's complaint of a broken arm or the child's allegation that a staff member had broken the arm.

m. The Respondent's director of nursing and human resources director, who was the acting administrator on the night of the above described incident, both reported that they were not informed of the child's allegation of abuse until hospital personnel reported the allegation to law enforcement on the morning of February 16, 2013. An investigation was then commenced. The human resources director indicated that all staff had been trained, but no documentation of this training was presented.

n. Respondent's policy and procedure dated 2/2013 and entitled "Abuse, Neglect, Abandonment of Patients, provides "Any suspected or witnessed incident of abuse or neglect shall be reported immediately to immediate supervisor, Hospital Supervisor, Risk Manager, or Administrator on Call. The accused employee must be immediately removed from all potential patient contact within the hospital."

o. Respondent's policy and procedure dated 8/04 on incident reporting provides: "[P]olicy to report any occurrence or incident that is not consistent with normal operation ... Class IV: Incidents involving employees ... For SIPP patients only: Accident or other incident that occurs while the recipient is in the facility."

p. On February 19, 2013, Respondent's staff members reported their understandings of Respondent's abuse policies. These responses included, in addition to the above recited, a mental health technician who indicated that she recognized the term "mandatory reporter," but had no knowledge of reporting abuse other than to tell the nurse. Two (2) other mental health technicians indicated that if noting abuse, they would tell a supervisor, but knew of no other action to take. A fourth mental health technician, hired approximately four (4) weeks ago and having just completed two (2) weeks of training, simply responded "I don't know" when asked of Respondent's policies related to reporting of suspected abuse and neglect. A registered nurse explained she is to report if she sees abuse. "Tell the supervisor immediately and they take care of it... I would probably ask them (staff members) to leave the unit if I thought it really happened." Respondent's nursing supervisor defined "immediately reporting" as "I should think twenty-four hours."

q. Respondent's operational staff is not sufficiently educated or competent in Respondent's policies and procedures related to reporting and responding to allegations of abuse and neglect to effectively implement these patient protection imperatives.

r. Respondent's administrator and director of nursing acknowledged that its staff did not investigate the abuse allegation of patient number one (1) immediately on February 15, 2013, did not implement the Facility's abuse procedures to ensure patient safety, did not report the allegations to required third parties such as the State's abuse registry, and did not assure prompt medical interventions in response to the child's complaints and allegations.

s. Other policies have not been followed. A policy entitled "Therapeutic Boundaries," a policy signed by each staff person during orientation, indicates "Staff members who have reason to believe a coworker is committing a boundary violation are obligated, for the sake of patient safety, to bring such concerns to a supervisor." A policy entitled "Maintaining a Professional Relationship with Clients, dated 8/04 and approved 2/13, provides "Not be alone with a client in a room with the door closed."

THE NECESSITY FOR THE IMMEDIATE MORATORIUM ON ADMISSIONS

18. The Agency is charged with the responsibility of enforcing the laws designed to protect the health, safety and welfare of clients in Florida's residential treatment centers for children and adolescents. Ch. 394, Part IV, Fla. Stat. (2012), Ch. 408, Part II, Fla. Stat. (2012); Ch. 65E-9, Fla. Admin. Code. Where the health, safety and welfare of such a client is at risk, the Agency will take prompt and appropriate action. Ensuring the protection of these children and adolescents from abuse and neglect is an essential purpose of the Agency.

19. The Respondent's Facility has exhibited current conditions which reflect deficient practices with respect to its abuse and neglect incident reporting, response, and investigation systems that are of such a severity that these deficiencies pose an immediate threat to the health and safety of the Facility's clients. Children and adolescents must not be subjected to such threats and dangers. Such a situation deprives them of a safe and decent treatment environment.

20. The Respondent's deficient practices are pervasive within the Facility and directly impact the health, safety, and welfare of its clients. The facts clearly reflect a situation where the Respondent's systems to effectively manage and treat its clients has failed in its implementation.

21. Incidents occur in any client population. The occurrence of such incidents is not necessarily indicative of the Respondent's compliance or non-compliance with the requirements of law. The responses to such incidents, however, are critical to the health, safety, and well-being of clients. These responses must, as mandated by law, be immediate to ensure the protection of patients and staff. These systems, when effectively implemented, minimize risk to patients and staff.

22. In this case, Respondent's policies and procedures related to recognizing, reporting, responding to, and investigating patient allegations of abuse and neglect have fallen

into disrepair. Respondent's staff has demonstrated, in both inaction and interview, a failure to understand the requirements of Respondent's policies and procedures, the mechanisms of their implementation, and the scope of each employee's role in these systems.

23. In the incident described above, Respondent had actual knowledge of alleged abuse. Two (2) of its staff members directly heard a child accuse another staff member of breaking the child's arm. Each took no action, other than a nursing response to the injury.

24. The alleged abuser was left to care for the victim and other children. Staff with actual knowledge of the allegation of abuse did not report the incident as required by Respondent's policy. Staff with actual knowledge of the allegation of abuse did not report the allegation as required by law. Ch. 415, Fla. Stat. (2012).

25. Since the arrest of staff member "A" for the alleged abuse of a child patient, Respondent has not ensured that these deficits in its staff proficiency have been addressed. Though Respondent's management reports that training has occurred, its operational staff demonstrate a lack of knowledge regarding their role in Respondent's abuse and neglect reporting procedures, their responsibilities for the protection of the children entrusted to their care after such a report, and their legal responsibilities to report to state authorities. Included in this staff population is an individual that claims to be an abuse trainer for the Facility. Clearly to the extent such training was provided, it did not meet its educational goals.

26. Patient protection cannot be served in such environments. Illustrative of this lack of protection is Respondent's failure to protect patient number one (1), and all other children, from staff member "A" after patient number one (1) vociferously accused staff member "A" of breaking the child's arm. Staff on duty failed to take immediate steps to assure the safety of Respondent's population in direct contradiction of Respondent's policy and law. Fla. Admin.

Code R. 65E-9.012(3)(c). It is unacceptable to ignore an identified risk at the expense of patient safety and well-being. The child patients in Respondent's care are part of Florida's most vulnerable population and must receive services to ensure their safety and well-being.

27. Respondent's failure to implement its policies and procedures designed for child protection are not isolated to its abuse and neglect procedures. Respondent requires mandatory reporting for violations of its policy on personal boundaries and professional relationships with patients. In like manner as the failure to report abuse, obvious and known violations of these policies were not reported by staff members directly observing the inappropriate activities.

28. These deficient practices are not isolated events, but systemic in nature. Respondent's abuse and neglect reporting, response, and investigation processes have not been consistently implemented by Respondent. These failures are in violation of the minimum requirements of law. Fla. Admin. Code R. 69E-9.005(3)(l); 65E-9.012(1), and (3)(c).

29. The deficient conditions and practices identified herein have existed in the recent past, exist presently and are very likely to continue to exist if the Agency does not act promptly. These deficient conditions and practices are systemic and directly affect the health and well-being of children of and the management of the Facility.

30. This emergency moratorium on admissions is necessary to ensure that children are not subjected to the unsafe conditions and deficient practices that currently exist in the Facility, or placed at risk of living in an environment where the failure of risk management programs may place a child in harm's way.

31. The Agency expressly finds that exigent circumstances exist in this instance that warrants this emergency action. The entry of this moratorium is necessary to protect current and prospective patients of Respondent's Facility from threat to their health, safety or welfare, and to

assure Respondent takes prompt action to correct the pervasive deficient practices that exist at its Facility and are likely to continue in the absence of this Agency action.

32. This immediate moratorium on admissions is a narrowly-tailored remedy that is fair under the circumstances. The deficient practices are of a systemic nature affecting the total census in Respondent's care. Respondent's actions to further identify and correct these practices will assure the safety of current and prospective patients in Respondent's care. Other less drastic relief, such as the assessment of administrative fines, will not adequately address the situation in this particular case. Immediate corrective measures are necessary to ensure the health, safety, and well-being of Florida's citizenry.

33. Florida's children and adolescents who suffer from mental illness deserve treatment and services which protect them from the risk of injury and promote treatment designed and implemented to address their medical issues.

CONCLUSIONS OF LAW

34. The Agency has jurisdiction over the Respondent pursuant to Chapters 408, Part II, and 394, Part IV, Florida Statutes (2012), and Chapter 65E-9, Florida Administrative Code.

35. Based upon the above-stated findings of fact, the Secretary concludes that the present conditions existing in the Respondent's Facility present a direct and immediate threat to the health, safety or welfare of the public and the children residing in the Facility and warrant an immediate moratorium on any and all admissions to Respondent's Facility, including but not limited to, admissions to beds which have been held by Respondent for any specific client.

IT IS THEREFORE ORDERED THAT:

36. An IMMEDIATE MORATORIUM ON ADMISSIONS is placed on the Respondent and its Facility based upon the above-referenced provisions of law.

37. This immediate moratorium on admissions shall continue in effect without limitation or interruption until the Agency determines that all of the deficiencies at the Respondent's Facility have been corrected and the Agency has determined through an appraisal survey that there is no longer any threat to patient health, safety, or welfare. Any future removal of the moratorium will be communicated by telephone and confirmed by written notification.

38. During the moratorium, the Agency may regularly monitor the conditions at the Facility and notify the Respondent when the moratorium is lifted.

39. The Respondent shall post this Immediate Moratorium on Admissions in a conspicuous location in its Facility until the moratorium is lifted by the Agency.

40. The Agency shall promptly proceed with any other administrative action to be brought against the Respondent based upon the facts set out herein and shall provide notice to the Respondent of the right to a hearing under Section 120.57, Florida Statutes (2012), at the time such action is taken.

ORDERED in Tallahassee, Florida, on this the 22nd day of February, 2013.



Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

This emergency order is a non-final order subject to facial review for legal sufficiency. See Broyles v. State, 776 So.2d 340 (Fla. 1st DCA 2001). Such review is commenced by filing a petition for review in accordance with Florida Rules of Appellate Procedure 9.100(b)-(c). See Fla.R.App.P. 9.190(b)(2). To be timely, the petition for review must be filed within 30 days of rendition of this emergency order.



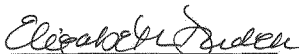
RICK SCOTT
GOVERNOR


ELIZABETH DUDEK
SECRETARY

**DELEGATION OF AUTHORITY
To Execute
Immediate Orders of Moratorium**

I specifically delegate the authority to execute Immediate Orders of Moratorium to Molly McKinstry, Deputy Secretary, Health Quality Assurance, or her delegate.

This delegation of authority shall be valid from date of October 1, 2010, until revoked by the Secretary.


Elizabeth Dudek, Secretary


Date

